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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,576	01/25/2002	Jordan C. Bonney	1032-002US01	1885

28863 7590 05/17/2006  
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EXAMINER
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CHO, HONG SOL

ART UNIT	PAPER NUMBER
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2616

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/057,576	Applicant(s) BONNEY ET AL.	
	Examiner Hong Cho	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01/25/2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27, 31-35, 37 and 38 is/are rejected.
- 7) ☒ Claim(s) 28-30 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/25/2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                               |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03062006</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 32 is objected to because of the following informalities:

Re claim 32, line 1, "A medium" should read - - A computer readable medium - -.

Re claim 32, line 7, "display one of the a representative packet" should read - -  
display one of a representative packet - -.

### ***Claim Rejections - 35 USC § 112, Second paragraph***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5-21 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claims 5 and 14, they recite, "communicating the captured network data".

There is insufficient antecedent basis for this limitation.

Re claim 25, it is not clear what is meant by "the remainder of the duplicate packets".

Claims 6-13 and 15-21 depend from claims 5 and 14 are therefore similarly rejected.

*Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Kant et al (U.S. 6836466), hereinafter referred to as Kant.

Re claims 1, Kant discloses capturing network packets at source and destination devices (*capturing network packets using a plurality of distributed agents*, figure 4, elements 222 and 227) with duplicate packet counter (*identifying duplicate packets that were captured by different agents*, figure 4, element 413) and creating data structure package for duplicate packet (*displaying a subset of the network packets based on the identification*, figure 8, element 804; figure 10).

Re claim 4, Kant discloses filtering packets (column 7, lines 10-12) and displaying duplicate packets (figure 8, element 804; figure 10).

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 3, 32-35, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kant in view of McCreery et al (U.S 5787253), hereinafter referred to as McCreery.

Re claims 2 and 3, Kant discloses all of the limitations of the base claim, but fails to disclose displaying the non-duplicate network packets and displaying a representative packet for the duplicate packets by comparing timestamps of the duplicate packets. McCreery discloses displaying captured packets with timestamp where non-duplicate packets are identified by different source and destination address and duplicate packets are identified by same source and destination address. Kant and McCreery fail to disclose displaying a representative packet for the duplicate packets. It would have been obvious to one having ordinary skill in the art at the time the invention was made to delete entries for duplicate packets to display one entry for duplicate packets so that network performance parameters such as packet throughput would be measured without taking into account retransmitted packets.

Re claims 32 and 33, Kant discloses capturing network packets at source and destination devices (*capturing network packets using a plurality of distributed agents*, figure 4, elements 222 and 227) with duplicate packet counter (*identifying duplicate packets that were captured by different agents*, figure 4, element 413) and creating data structure package for duplicate packet (*displaying a subset of the network packets based on the identification*, figure 8, element 804; figure 10). Kant fails to disclose displaying the non-duplicate network packets and displaying a representative packet for the duplicate packets by comparing timestamps of the duplicate packets. McCreery discloses displaying captured packets with timestamp where non-duplicate packets are identified by different source and destination address and duplicate packets are identified by same source and destination address. Kant and McCreery fail to disclose displaying a representative packet for the duplicate packets. It would have been obvious to one having ordinary skill in the art at the time the invention was made to delete entries for duplicate packets to display one entry for duplicate packets so that network performance parameters such as packet throughput would be measured without taking into account retransmitted packets.

Re claim 34, Kant discloses all of the limitations of the base claim, but fails to disclose identifying duplicate packets by identifying packets having equal sequence numbers and acknowledgement numbers and by performing a byte-by-byte comparison for payloads of the identified packets. McCreery discloses identifying duplicate packets by analyzing sequencing and acknowledgement information in a packet (column 10, lines 13-16). McCreery inherently discloses a byte-by-byte comparison for payloads of the

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identified packets. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fletcher to adopt the process of McCreery in identifying duplicate packets so that network performance parameters such as packet throughput would be measured without taking into account retransmitted packets.

Re claims 35, 37 and 38, Kant discloses displaying the captured network packets into sets of network packets based on source and destination number (figure 10).

Claims 5, 9, 10, 14, 15, 21-24, 26, 27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher et al (U.S. 6085243), hereinafter referred to as Fletcher in view of McCreery.

Re claims 5 and 14, Fletcher discloses distributed remote monitoring (dRMON) agents capturing network packets (*a plurality of distributed agents*, figure 8, element 80, column 8, lines 45-49), a management station (*an aggregator*, figure 8, element 84) receiving captured data from dRMON agents (*communicating the captured network data to an aggregator*, column 8, lines 45-49). The management station sorts and aggregates captured data into a database, but fails to disclose aggregating the captured network packets into sets of network packets based on source and destination information for the network packets. McCreery discloses data table showing source and destination information of captured packets (figures 6a). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fletcher to adopt data management and report generation module of McCreery since Fletcher suggests sorting and aggregating captured data into a database. The motivation is to analyze

network traffic between a given source and destination node for network capacity planning.

Re claims 9 and 10, Fletcher discloses source and destination information comprising a media access control address (column 4, lines 47-50).

Re claim 14, Fletcher discloses graphically displaying the set of aggregated network packets on a management station (column 4, lines 55-58).

Re claim 15, Fletcher discloses all of the limitations of the base claim, but fails to disclose selecting one of the sets of aggregated network packets in response to user input and displaying the packets of the selected set. McCreery discloses the data table (*one of the sets of aggregated network packets in response to user input*, figure 6b) that does not include the selected ports (*displaying the packets of the selected set*). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fletcher to adopt report and statistics retrieval module of McCreery to track network traffic so that a user would collect important network packets and analyze them at the management station.

Re claim 21, Fletcher discloses communication between RMON probes (*agents*) and a management station (*an aggregator*) (column 4, lines 40-45).

Re claim 22, Fletcher discloses distributed remote monitoring (dRMON) agents capturing network packets (*a plurality of distributed agents*, figure 8, element 80, column 8, lines 45-49), a management station with a display (*an aggregator*, figure 8, element 84) receiving captured data from dRMON agents (*communicating the captured network data to an aggregator*, column 8, lines 45-49). Fletcher discloses the management station



sorting and aggregating captured data into a database (*presenting the non-duplicate network packets on the display*, column 8, lines 45-49), but fails to identify duplicate packets that were captured by different agents. McCreery discloses discarding duplicated packets (column 10, lines 16-19). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fletcher to adopt the decoded packet recomplier of McCreery to analyze network traffic between a given source and destination node without taking into account duplicate packets.

Re claim 23, Fletcher discloses all of the limitations of the base claim, but fails to disclose displaying a representative packet for the duplicate packets. It would have been obvious to one having ordinary skill in the art at the time the invention was made to delete entries for duplicate packets to display one entry for duplicate packets so that network performance parameters such as packet throughput would be measured without taking into account retransmitted packets.

Re claim 24, Fletcher discloses all of the limitations of the base claim, but fails to disclose displaying a representative packet for the duplicate packets by comparing timestamps of the duplicate packets. McCreery discloses displaying captured packets with timestamp where duplicate packets are identified by same source and destination address (figure 5b-1). Fletcher and McCreery fail to disclose displaying a representative packet for the duplicate packets. It would have been obvious to one having ordinary skill in the art at the time the invention was made to delete entries for duplicate packets to display one entry for duplicate packets so that network performance parameters such as packet throughput would be measured without taking into account retransmitted packets.

Re claim 26, Fletcher discloses all of the limitations of the base claim, but fails to disclose identifying duplicate packets by identifying packets having equal sequence numbers and acknowledgement numbers and by performing a byte-by-byte comparison for payloads of the identified packets. McCreery discloses identifying duplicate packets by analyzing sequencing and acknowledgement information in a packet (column 10, lines 13-16). McCreery inherently discloses a byte-by-byte comparison for payloads of the identified packets. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fletcher to adopt the process of McCreery in identifying duplicate packets so that network performance parameters such as packet throughput would be measured without taking into account retransmitted packets.

Re claim 27, Fletcher discloses maintaining captured packets associated with MAC addresses (*assigning captured packets into sets of packets based on source and destination information*, column 4, lines 47-51).

Re claim 31, Fletcher discloses communication between RMON probes (*agents*) and a management station (*an aggregator with a controller*) (column 4, lines 40-45).

#### ***Allowable Subject Matter***

8. Claims 6-8, 11-13, 16-20, 25, 28-30 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 571-272-3087. The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 571-272-3088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hong Cho  
Patent Examiner  
5/9/06

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